

**The Secret to Secret Senate Holds:
Historical Analysis and Quantification of the Impact of Holds**

Research Thesis

Presented in partial fulfillment of the requirements for graduation with research distinction in Political Science in the undergraduate colleges of The Ohio State University

By

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The Ohio State University
May 2013

I would like to thank C. Lawrence Evans, Greg Koger, Scott MacKenzie, David Rohde, Randall Ripley, Don Ritchie, Steven Smith, Jake Young for helpful comments and discussions, Chuck Finocchiaro for the opportunity for me to participate in the SPSA Dissertation Mini Conference, the Lyndon Baines Johnson Foundation, Ohio State University's College of Social and Behavioral Sciences, Arts and Sciences College, and Undergraduate Research Office for funding support, Barbara Cline at Lyndon Baines Johnson Library, Donna McCrea at the Maureen and Mike Mansfield Library, and Frank Mackaman at the Dirksen Congressional Center for research assistance.

Abstract

There are many forms of obstruction in the U.S. Senate, but some are less public than others. A Senate hold is an effective and critical component of Congress. A senator can place an anonymous hold on any piece of legislation or nomination before the Senate by informing their party leader. A hold will stop or kill legislation or a nomination and may be used to leverage concessions. This project examines the procedural innovation of the hold by Lyndon B. Johnson in the 1950's. Our research has discovered that the earliest available data on the use of Senate hold is from the archive of Senate leader Lyndon Johnson, which is in contrast to the common wisdom, which states that holds began later in the 1970s. This project seeks to accomplish two goals: First, it provides additional historical information about the development of Senate holds. Second, it compares and contrasts the usage of holds and analyzes the impact. A quantitative analysis of the probability of legislative passage when the bill is subjected to a hold is examined. Holds, and how the Senate operates, is important in examining questions of fairness, efficiency and majority/minority rights.

“If you walk down any street in America, I’ll bet you won’t find one out of a million Americans who knows what a secret hold is’ – Senator Ron Wyden (R-OR) . . . He finds it very confounding that somebody puts a hold on a piece of legislation that he has and he can’t find out the answer about who is doing the hold. After all, isn’t it somehow anti-democratic (with a small ‘d’) that somebody’s able to do this?” (Gold 2003, 86).

Obstruction in the US Senate has become an increasingly common occurrence over the last 60 years. The journey to get to the current state of the Senate has been as interesting as it has been long. The Senate has developed a vast array of obstructionist tools, many of which are used on a daily basis. Publically filibustering and private notes, known as holds, are extremely effective tactics.¹ Obstruction has led to a legislative environment that is difficult to navigate as some form of obstruction affects almost all pieces of legislation and nominations in today’s Senate. Secret holds arguably restrict more legislation and appointments than modern filibusters, yet very little has been written about holds. It is important to more fully understand the origins of one of the most effective, understudied, used, and secretive forms of obstructionism in the Senate – the hold.

The Senate is known as the deliberative body, so it is not surprising that the institution typically moves slowly and emphasizes individual rights. It is also common wisdom that it is easier to block legislation than to pass it. Evans and Lipinski (2005) go further and state that obstruction is one of the most prevalent characteristics in the modern U.S. Senate. Filibusters are the most well-known ways to obstruct legislation in the Senate. And many critically important works have been written about the filibuster, e.g., Binder and Smith 1997; Fisk and Chemerinsky 1997; Binder, Lawrence, and Smith 2002;

¹ Paone (2009) points out that holds are also referred to as consults, re: “We’ll let you know when this thing’s coming up. You can decide then what your appropriate actions will be” (2009, 38).

Wawro and Schickler 2006; Koger 2010. While filibusters can be overcome, the time consumed is often not worth the risk, especially if it is just before a recess or near the end of a session (Sinclair 1997). However, legislation can be obstructed even before it gets to the floor with the threat of a filibuster. This makes the hold, which can imply the possibility of a filibuster, particularly powerful and important. How powerful? Gold's oral history (2003) describes it this way, "a single senator can block legislation that is desired by ninety-nine others because the requirements to overcome his objection are so cumbersome that there may not be time to address them . . . that will strike the average person as being tremendously anti-democratic and tremendously unfair, but that's the nature of the Senate" (2003, 87).

Much less is known about holds than filibusters due to their more secretive nature. Indeed, holds did "... not get into the public discourse until the 1970s, when Senator Jesse Helms began making his holds a matter of public record" (Ritchie 2012). Holds are the "... flip side of the unanimous consent agreement" and therefore evolved after Lyndon B. Johnson served in the Senate at majority leader due to his use more frequent use of unanimous consent agreements (Ritchie 2012). Caro (2002) elaborates by saying, "Lyndon Johnson, looking for power over the Senate, had found another instrument with which power could be created. It wasn't a new instrument . . . Never, however, had it been used as this Leader used it. His use of it was, in fact, perhaps the most striking example of the creativity that Lyndon Johnson brought to the legislative process" (2002, 572). This was, of course, the unanimous consent agreement. The power of a hold has evolved from the efforts to reduce uncertainty about the prospects of legislation or nominees passing on the floor to a more powerful tool as unanimous consent agreements have increased.

I argue that Johnson started the use of holds at the same time that he began using

unanimous consent agreements as an information system with fellow Senators and to understand which senators needed to be negotiated with to get their votes. It is well known that Johnson himself, as well as his aides, “. . . would go to the senators involved: ask what would satisfy them, work out possible compromises. Then Johnson himself would telephone or visit, or summon, the senators: reason with them, cajole or threaten them in private – persuade them to accept the compromise” (2002, 559). It makes sense that those who felt they could bargain with Johnson would do so and may make it abundantly clear through the use of a hold that they intended to bargain in order to reach a compromise.

Caro (2002) has an example of a hold in his book, placed on a textile bill, though the details of which senator placed the hold is not clear in the book (2002, 559). Our work at the Lyndon Baines Johnson Archives uncovered the original document, which shows that the hold was from Harry F. Byrd (D-VA) on H.R. 469, the Textile Fiber Products Identification Act, see Figure 1. The bill is “to protect producers and consumers against misbranding and false advertising of the fiber content of textile fiber products” (United States 1958). Majority Leader Lyndon B. Johnson’s response just two days later, where he promises to keep Byrd informed, is in Figure 2. The hold has been an opaque, but powerful, instrument shaping the schedule and flow of business in the Senate.

Obstruction has been on the rise over the last 30 years (Koger 2010). Senate holds are no exception (Hildenbrand 1985). The rise of obstruction makes the study of holds all the more important. Many scholars believe that the increase in obstruction has created a legislative climate where almost all legislation is affected. The simple threat of obstruction has slowed the legislative process (Howard and Roberts 2012). Because of the anonymity afforded to senators by holds and the lack of data on them, they are not as scrutinized as other forms of obstruction, such as filibusters, though they are arguably more effective.

To understand the Senate hold, it is important to understand its roots. One of the first limits on debate and procedural rules to move the Senate's business along was the Anthony rule, passed on December 6, 1870. Under the Anthony rule, the Senate proceeded to consideration of the Calendar and bills that were not objected to in order and each Senator was given the opportunity to speak once and for five minutes on each question (Congressional Research Service 2011, 13). A simple objection would prevent the use of the Anthony rule though. Unanimous Consent Agreements (UCAs), while around since 1845 and part of the Senate Rules as Rule 12, Paragraph 3 since 1914 (Caro 2003, 572), were not actively used until the 1950s when Johnson brought them to bear as a tool to manage the Senate's business on the floor (Smith and Flathman 1989). Complex unanimous consent agreements set the terms for consideration of a bill or nomination, such as time limits for debate and germaneness restrictions for amendments, and are usually determined by the majority leader or floor manager after negotiation with senators interested in the bill. It occurs when members of the Senate give up their procedural rights to certain actions within the rules of the Senate on a daily basis (Oleszek 1978). These agreements developed as a procedure to move the business of the Senate along in a more efficient manner, while still providing benefits for the individual senators, e.g., Krehbiel 1986; Ainsworth and Flathman 1995.

The significance of this project is that it provides evidence about the origins and evolution of the Senate hold that is contrary to the current understanding of their development. The discovery of a Senate hold that is significantly older than other holds that have been studied sheds new light on the development of the procedure. While the hold is not formalized and it is unrecognized in Senate rules and precedents, it is one of the most important legislative tools and is one of the least studied legislative processes

(Oleszek 2011). This project provides an in-depth examination of an incredibly effective obstructionist tactic that has been a part of the Senate for over 60 years. In addition, it is clearer how much influence an individual senator has in the institution to achieve his or her own goals. A quantitative analysis of the factors that explain which senators use holds and the probability of passage when holds are used is examined. The work will be of great interest to scholars studying the Senate, senatorial behavior, and interbranch relations because of concerns about fairness, efficiency, and majority/minority rights in the structure of our governmental institutions.

Holds, Obstructionism, and the Individualistic Senate

Martin Gold defines a hold as, “a notice to the leadership that somebody wants to assert procedural rights in the face of certain legislation” (Gold 2003).² The hold is a discreet form of obstruction in the Senate as it may be the case, and usually is, that only the member placing the hold and the leader informed know who placed the hold. Initiating a hold is straightforward and easy, a senator communicates to the leader of their party that they wish to place a hold. This can be done orally, through assistants passing hand written notes, or formal letters.

A hold may be used to extract concessions on the legislation being considered from other members, the Senate leadership, or the President. Holds can keep legislation “hostage” so that concessions may be gained on an unrelated piece of legislation or

² Martin Gold was Counsel to the Senate Republican Leader from 1979-1982 and 2003-2004. Martin Gold began his service in the Senate in 1972. He served as Senate Republican Leader Howard Baker’s procedural specialist in 1979 and remained in the position until 1982. He returned to the Senate as counsel on procedural matters from 2002-2004 for Majority Leader Bill Frist.

nominee. That is, holds may also be placed for unrelated reasons.³ Paone (2009) relates Edward Meese's nomination for Attorney General being held up over an agricultural issue and Senator James Inhofe putting a hold on every judicial nomination that President Clinton had via a blanket hold. Still, Paone (2009) explains that holds are necessary to make unanimous consent agreements work. He says that ninety percent of the work is done by unanimous consent and that "the only way you're going to get things done by unanimous consent is by making sure everyone knows what you're doing and they've had a chance to look at it and then had a chance maybe to alter it" (Paone 2009, 109). Thus negotiations are often initiated with those who have placed a hold.

Members may also place a hold simply to request being informed as the legislation or nominee moves forward due to a personal interest. Holds may be used as a temporary delay so that more information can be gathered or as a form of permanent blockage. Paone adds that a hold may be placed due to an upcoming election (Paone 2003, 40). That is, a senator may not want to vote on a piece of legislation right before an election if that legislation may hurt him or her with constituents back home.

The primary reason that holds are effective is that they imply the threat of a filibuster on the Senate floor such that no other business can proceed. "A hold is only good as long as you've got a member willing to go out there and debate the motion to proceed or to filibuster" (Paone 2009). The implicit threat of a filibuster via a hold, is usually enough to make the concerned parties negotiate. While many decry the secretive nature of holds, the positive aspect is that negotiation is infinitely easier outside the eyes of the public and

³ Evans and Lipinski (2005) and Howard and Roberts (2012) code holds according to the "type" of hold based on the purpose of the hold, which is discerned from the letters to the leadership asking for a hold to be placed. Unfortunately, the older data from Lyndon B. Johnson's time as leader does not provide the same details to allow coding by type.

media who often charge members as giving in too much or flip flopping if any concessions are given.

Hildenbrand's oral history (1985) notes that the leadership is sometimes not told why the senator wants to place a hold.⁴ "We don't know if they're opposed to the legislation, whether they just have a speech that they want to give, whether they've got an amendment that they want to offer, all of those things we don't know unless the letter tells us. So we have to check at the time we're ready to take it up and find out what their interest in it is" (Hildenbrand 1985, 310-11). Gold echoes this when describing the range of holds from soft, where a member wants to be consulted before a bill is moved, to tough, where the member does not want a unanimous consent agreement (Gold 2004, 84). However, because they are secretive it is not always clear to other senators whom to negotiate with, or in stalemate whom is to blame.

There are advantages of a hold as a communication device, "If you didn't have holds, or a system for communication with the leadership, it would force members to come to the floor and do it themselves, which would create a lot of inconvenience. The leaders could catch people by surprise and say, 'I didn't know you were interested.' That's not a good way for leaders to retain support. I think the better part of valor is to protect your own members. But protecting them means that you have to know what they're up to, what they want. Consequently, you have holds" (Gold 2003, 84). Holds allow senators to compromise. Some reformists do not want holds to be secretive, however, such a major institutional reform would have other consequences. "Disclosure creates accountability, but also

⁴ William F. Hildenbrand began his service on Capital Hill in 1957. He was Assistant to Senator J. Caleb Boggs from 1961-1969; Administrative Assistant to Senator Hugh Scott from 1969-1974; Secretary to the Minority from 1974-1981, and Secretary of the Senate from 1981-1985.

probably creates intractability. Because now people are on the record on the issue” (Gold 2003, 85). Ritchie concurs, “the Senate has continued holds because there’s an advantage to it. There’s an advantage to the leadership not to be blindsided by somebody objecting to a unanimous consent agreement” (Ritchie 2003, 86). In short, “It works for the leadership and it works for the individual” (Gold 2003, 86). At least it works for most individuals.

Howard and Roberts (2012) conclude with a more pessimistic view, “the hold is nothing more than a symptom of a set of rules that empowers individual senators at the expense of legislative majorities” based on their analysis of Republican holds during the 99th to 104th Congress (2011, 37). They see holds as an inevitable development from the formal procedures of the Senate. Most Senators place holds during the time period Howard and Roberts study, particularly the more conservative members of the Republican party. However, they also found that the extreme holds were less effective.

The Oldest Hold from the Lyndon Baines Johnson Archive

The data for this project is based on correspondence between Democratic senators and Senator Lyndon Johnson, the Senate Majority leader for the 84th Congress. Data is scarce in this situation due to the age of the information and lack of systematic records from that time. Another consistent problem in analyzing holds is the anonymity that they provide to senators. Many holds were recorded without including the identity of the senator who placed the request. Nearly all of the information for this project was gathered from Senate calendars that were kept by Senator Johnson’s assistant G. W. Siegel. Figure 6 is a page from a Senate Calendar of Business for Monday, July 18, 1955. It is an example of how Senator Johnson’s assistant helped to keep the senator organized. It also shows how data had to be extracted from each individual calendar that was marked in Senator

Johnson's archive. There were also a handful of individual hold letters that showed different motivations for placing a hold.⁵

While practitioners and scholars do not debate the immense importance of holds, the literature on holds is sparse. This is primarily due to a lack of systematic data. In the work that exists, there are contradictory timeframes for the origins and major uses of holds. The research conducted for this project has reached as far back as the first party leaders of the Senate and included reading histories and contacting their archives in search of information on holds.

While Koger (2010) states that it is unclear when the hold system began, he traces holds back further than most of the literature, "the earliest known reference to a hold is in the DPC Minutes for August 5, 1958" (2010, 174). According to the papers in the Lyndon Baines Johnson Archive, not only were there references to holds before 1958, but holds were already commonplace. These early holds were also very similar to the ones found in the archive of Robert Byrd by Evans and Lipinski (2005) almost twenty years after the first hold was sent to Johnson. This surprising fact is the main reason that the discovery in Austin is important for the understanding of Senate holds. This earlier use parallels the rise of unanimous consent agreements at the same time.

Some scholars have claimed that holds mostly developed under Robert Byrd when he was the Whip for Senate leader Mike Mansfield in the 1970s. Davidson (1985) and Evans and Lipinski (2005) note that Senator Byrd (D-WV) coordinated the system as majority whip. Smith (1989) notes that holds "were a central part of the process for obtaining unanimous consent agreements during the 1970s" (1989, 110), which leaves

⁵ However, the data did not provide enough detail to perform quantitative analysis by type.

open the possibility that holds originated long before they were deemed central to the process. Similarly, the Congressional Research Service's 2011 Report on Hold Reform notes that holds were widespread during and after the 1970s while stating that "the exact origins of the practice are unclear and lost in the mists of history" (2011, 1). Holds placed in the 1970s (under Byrd) and 80s (under Bob Dole) look very similar to the ones placed when Lyndon Johnson was Senate leader. This evidence points to holds developing earlier under Johnson and his strong leadership.⁶

Unique data has been uncovered at the Lyndon B. Johnson Archive that includes the oldest known examples of holds being used in the Senate.⁷ The implication is that our understanding of the procedure changes based on this new origin date. Lyndon Johnson was the Senate majority leader from 1955 to 1961. Johnson was known to be ruthless, yet charming while almost always getting what he wanted (Caro 1990). He undoubtedly had plans for how the Senate would evolve under his leadership. He oversaw the early development of holds during his time in the Senate as the leader of the Democratic Party. Senator Johnson received the first known hold from Senator Clinton P. Anderson on May 22, 1954, (83rd Congress) concerning S. 3457 (Lyndon Baines Johnson Archive,

⁶ There is, however, a gap in information that needs to be filled in. This gap was during the time of Senate leader Mike Mansfield of Montana. Holds might have become less useful for a short time under Mansfield and resurfaced when Byrd became majority whip (1971-1977) and then the Democratic leader (1977-1989). An archival research trip was taken to the Mansfield Archive in spring 2013 and the sparse information obtained will be included in the next iteration.

⁷ I cannot definitively say whether Johnson's counterpart, Minority Leader Everett M. Dirksen (R-IL), who served in this position from 1959-1969, used holds. No evidence has been found. Hildenbrand (1985) describes the calendar committee as regulating which bills were held when Hugh D. Scott (R-PA) was the Republican Minority Leader from 1969-1977 (1985, 310). I found a similar reference in Johnson's papers in the document shown in Figure 6. I have evidence of the spread of the informal use of holds by both parties via Paone's (2009) reference to both Republicans and Democrats keeping marked calendars (2009, 44).

Congressional File 1937 - 1967; Box 39). The hold is a written letter about S. 3457, which addresses the appointment of Colonel Leland Hazelton Hewitt as a U.S. Commissioner, see Figure 3. Senator Anderson does not say why he wants the bill held.

Senator Anderson requested the first known hold on May 22, 1954, and there is evidence that he also requested holds on three other pieces of legislation. On June 11, 1954, he requests that H.R. 303, which provides for the transfer of health and hospital facilities for Indians to the United States Public Health Service, not be voted on until he returns to Washington, D.C. Senator Anderson indicates that another senator, A. S. Mike Monroney, would like to hold the legislation as well. This is the first time that more than one senator is known to have placed a hold on a piece of legislation, see Figure 4 (Lyndon Baines Johnson Archive, Congressional File 1937 - 1967; Box 39).

In a letter from Senate Majority Leader Lyndon B. Johnson to Senator Clinton P. Anderson, dated June 8, 1960, Johnson explains how holds work, see Figure 5. Johnson is replying to a letter from Anderson about S. 1092. It appears that Anderson did not place a hold on this bill, but regretted that given the amount of money authorized. Not surprisingly, Johnson wants to maintain flexibility rather than having additional rules that could decrease his ability to negotiate.

The practice began to take form in the 1950s and paralleled the rise of unanimous consent agreements to manage the business of the Senate on the floor. Given that unanimous consent agreements were being used more often, it makes sense that holds also grew along with unanimous consent agreements as a way to organize and understand whether the unanimous consent agreement would be passed. Leadership discretion still appears to be part of the system of holds (Paone 2003). Furthermore, Paone (2009) describes writing the information about holds on the calendar (2009, 41), just as Johnson

did in the 1950s (see Figure 6). Hildenbrand points out that, “all the hold letters, so called, go to Howard Greene’s office. They keep the calendar, and they mark the calendar that says who has holds . . .” (Ritchie 1985). Howard Greene was the secretary of the majority at this time. Though it was thirty years later, this description fits the Senate Calendars that Senator Johnson kept in the mid-1950s as well. Some scholars disagree that keeping track of holds was so trivial and archaic, but the interviews that Mr. Ritchie conducted show that holds were obviously kept on calendars before 1985. The data found at the Lyndon B. Johnson Archive shows that Senator Johnson’s office started the practice of keeping holds on Senate Calendars far before previously thought.

Evans and Lapiski (2005) argue that “although the hold initially was an informational device, during the 1970s it appears to have evolved into something more; perhaps not a de facto veto power as some observers claim, but at the very least a major bargaining chip in the legislative process” (2005, 15). This interpretation makes the hold more useful and palatable. Instead of Senators having the ability to single handedly kill a bill; senators have another way to bargain.

Given the record and evidence about Johnson’s leadership style, and his recording of holds on the calendars and the letters he received, I similarly conclude that holds were used to manage the business of the Senate and allow the “Master of the Senate” to work. A hold is not just a way to stop legislation, it is a way to compromise outside of public scrutiny. This is in stark contrast to the obstructive filibuster. During the period that they studied, Evans and Lipinski found that “more than ten times as many measures were targeted by holds than were the subject of actual filibusters and cloture votes” (Evans and Lipinski 2005, 25). This illustrates that the public filibuster is only one of the many ways that obstruction can occur in the Senate and perhaps not the most common or even

effective.

The Use of Holds in the 1950s

According to the data collected from calendars in the Lyndon Baines Johnson Archive, 352 bills that were brought before the Senate had some type of hold placed on them.⁸ Of those 352 bills that were held, 116 came from the House of Representatives and 236 originated in the Senate itself. The bills with holds placed on them came from the Senate 67% of the time between 1955 and 1956. The other 33% came from the House. This might be due to the fact that senators felt that for House bills, the due diligence was already done and the correct choice was made in passing the bill on to the Senate. In 1955, the House had a Democratic majority and the data collected is from a Democratic Senate. House and Senate Democrats have similar ideologies during this time period⁹ and the Senate likely agreed with many decisions that were made in the House prior to the legislation being passed on to the Senate for action. Another possible explanation for the abundance of holds placed on Senate bills is that senators did not see eye to eye on bills. While Senate Democrats likely sided with House Democrats on most bills, Senate Democrats and Senate Republicans probably did not agree as often. Both the Senate and the House were controlled in 1955-56 (84th Congress) by the Democrats and Republican Dwight D. Eisenhower was serving his third and fourth years in office. Based on this data, it is difficult to identify the level of partisanship present in the Senate because the data is only from Democrats.¹⁰

⁸ Scanned copies of the data will be made available to other scholars through the authors' websites and Dataverse upon publication.

⁹ Provide DW-Nominate scores.

¹⁰ Future iterations of the paper will include which party sponsored the bill.

It is easy to identify that holds are more effective on bills that originate in the Senate. Bills from the House of Representatives that had holds placed on them once they got to the Senate passed 77.6% of the time. Table 1 shows that only 26 out of the 116 House bills held during the 84th Congress never passed the Senate.¹¹ Only 39.4% of Senate bills passed after a hold was placed on them. Held bills from the Senate made up 84.62% of the bills that did not eventually pass through the Senate. This shows that the power of the hold was especially useful on bills that originated in the Senate. Once senators were comfortable using the hold to their advantage, they may have used the hold as leverage to get what they want on their own legislation.¹²

Table 3 shows that of the 352 bills that had holds placed on them, 169 did not pass. 183 bills did eventually pass the Senate. 52% of the bills with a hold on them in the 84th Congress eventually passed. Looking deeper into the data, however, shows that skill and timing are involved in placing a hold on a bill. The first session in 1955 had a higher passage rate for held bills than the overall Congress. Bills with holds passed 63.6% of the time. The second session of the Congress had a passage rate of only 38.8%, which is much lower than the overall Congress. That means that if a hold is placed later in the session, there is a smaller chance that legislation will leave the Senate intact. This is due to the fact that there is simply less time to work on legislation as the second session winds down. There is not time to get senators the concessions they want, amend bills, or reschedule a

¹¹ Additional analyses are planned, including a negative binomial model on the number of holds per senator and a logit model on whether the legislation with holds eventually passed or not. The purpose of these analyses will be to examine factors that explain which Senators place holds and the fate of the legislation and nominees subject to holds.

¹² Future work includes information about which party sponsored the bill. Often the other party will oppose the legislation simply due to the other party sponsoring it. That is, partisan obstruction may be at work. (Broockman and Butler 2013).

vote. Paone (2009) concurs, “the hold can become more important or more effective in the closing days of a session or before a recess” (2009, 37).

The power of the hold is enhanced by the anonymity that it gives to senators to obstruct legislation. A hold is, in a way, a threat to filibuster, but in an anonymous and silent fashion. Typically, only the Senate leader and the senator themselves know who placed a hold on legislation and there is no way to punish that senator for being an obstructionist. The fact that there is not a systematic dataset listing holds and who placed them gives immunity to many senators who obstruct the legislative process on their own. Table 2 shows that Senators Wayne Morse, Allen J. Ellender, and Herbert H. Lehman placed the most holds on bills during the 84th Congress with 34, 32, and 20 holds respectively.¹³ Senator Wayne Morse (D-OR) was known as a maverick and “at the convening of the 84th Congress in 1955, Morse gave up his Independent status to become a Democrat. This act gave Senate Democrats the one-vote margin that returned them to the majority. Party leader Lyndon Johnson restored Morse's seniority and offered him his choice of committee assignments” (Senate Historical Office 2009). Given Morse’s pivotal role for Johnson to move from Minority to Majority Leader, it is not surprising that Morse placed holds and that Johnson took note of them. Senator Morse’s DW-Nominate score shows extremism. He is ranked as the most liberal senator in the 84th Senate with a DW-Nominate score of -0.912 (Poole 2013). Senator Herbert H. Lehman (D-NY) was the second most liberal with a DW-Nominate score of -0.654. Lehman and Johnson did not like each other, so some strategic bargaining may have occurred with the use of Lehman’s holds as a filibuster threat. Lehman and Morse often placed holds together. They have the most joint holds of any other senator pair, a total of six. Senator Allen J. Ellender (D-LA) ranked 9th in seniority in

¹³ Future work will examine how the members who placed the hold voted.

the 84th Senate and has by far the most holds of any of the most senior members. His DW-Nominate score is more moderate, -0.075, which is a ranking of 40th most liberal. In essence, he was one of the more moderate Democrats and thus may have played an important negotiating role between the parties.¹⁴

Holds only exist in the Senate and many scholars agree that they have been used as a bargaining chip since they became commonplace. There were a total of 352 bills held from 1955 to 1956. There were 4,314 bills introduced in the Senate during the same time period (Congressional Record Digest 1956). Of the 352 held bills, 51.2% eventually passed the Senate. Legislation that had a hold placed on it in the second session was less likely to pass. Only 38.8% of the bills held made it through the Senate during the second session. This meant that scheduling was an important aspect of legislating. Holds became more powerful when time is running short and they obstructed legislation with greater impact.

Senate bills passed less often than House bills when there were holds placed on them. This may suggest that senators held bills in order to get concessions on their own legislation or to simply kill a bill before it made it to the floor. Judging from the relatively high number of Senate bills that did not pass after holds were placed on them, there might have been a high level of partisanship in the Senate. Of the 236 bills that were held and originated in the Senate, 143 did not eventually pass the Senate. Of the 119 bills that were held and originated in the House, only 26 did not eventually pass the Senate. The House and the Senate both had Democratic majorities and the bills that came from the House likely had an easier time making it through the Senate.

¹⁴ Future work will plot the number of holds by the DW-Nominate scores, which are a measure of polarization.

Conclusion

This project provides a new starting date for the practice of Senate holds that is older than was previously thought. Most importantly, it provides a systematic analysis of the usage of holds that joins only a handful of other important papers on the topic. A new find at the Lyndon Johnson archive in Austin, Texas, has shown that the practice of Senate holds as a procedural innovation likely started in the 1950s. The Senate hold is a powerful tool that arose as an opposing action to the unanimous consent agreement (Smith 1989). It grew into a way to forewarn Senate leaders about objections to unanimous consent agreements within the ranks of their own party. It is not, however, a formalized rule in the Senate. This makes it even more powerful. The primary reason that holds are effective is that they imply the threat of a filibuster on the Senate floor such that no other business can proceed. It is a discreet process that involves a senator privately communicating with to the leader of their party in the Senate indicating they are placing a hold. This can be done through assistants passing hand written notes or formal letters from senator to the leadership. The practice is simple, yet effective.

The pervasiveness of holds may be an unintended consequence of the development of congressional rules and norms, similar to what is argued by Binder (2007) about the Senate “blue slip” where special procedural rights are given to home state senators in judicial confirmations. The questions of fairness, efficiency, and majoritarian/minority rights about the use of holds and other institutional design factors are important considerations for democratic institutions.

In an August 31, 2011, report by the Congressional Research Service, holds are described as, “An informal senatorial custom unrecognized in Senate rules or precedents”

(CRS Report 2011). Because they do not formally exist in the Senate rules, the usage of holds is based on the discretion of the leader of each party. There have been numerous attempts to change the way holds work over the years, but none have been enacted.¹⁵ Evans and Lipinski (2005) doubt that efforts to alter scheduling and forms of communication, such as the hold, will be successful in the Senate. “Members will only find other ways to signal their likely objections to pending unanimous consent requests and leaders will continue to value the information” (2005, 26). While the Senate hold might not be popular with all senators at all times, it is a practice that probably all senators employ in the modern Senate and is likely to stay in place. The Senate hold has lasted for over sixty years and obstructed thousands of bills due to the rise in the use of unanimous consent agreements by the leadership and the role of a hold as a critical tool to manage the business of the Senate on the floor in that procedural environment.

¹⁵ Future iterations will include work on the efforts by some senators to reform the practice of secret senate holds.

Figure 1: Senator Harry F. Byrd's (D-VA) request to hold HR 469, the Textile Fiber Products Identification Act on July 8, 1958, (86th Congress) to Majority Leader Lyndon B. Johnson.

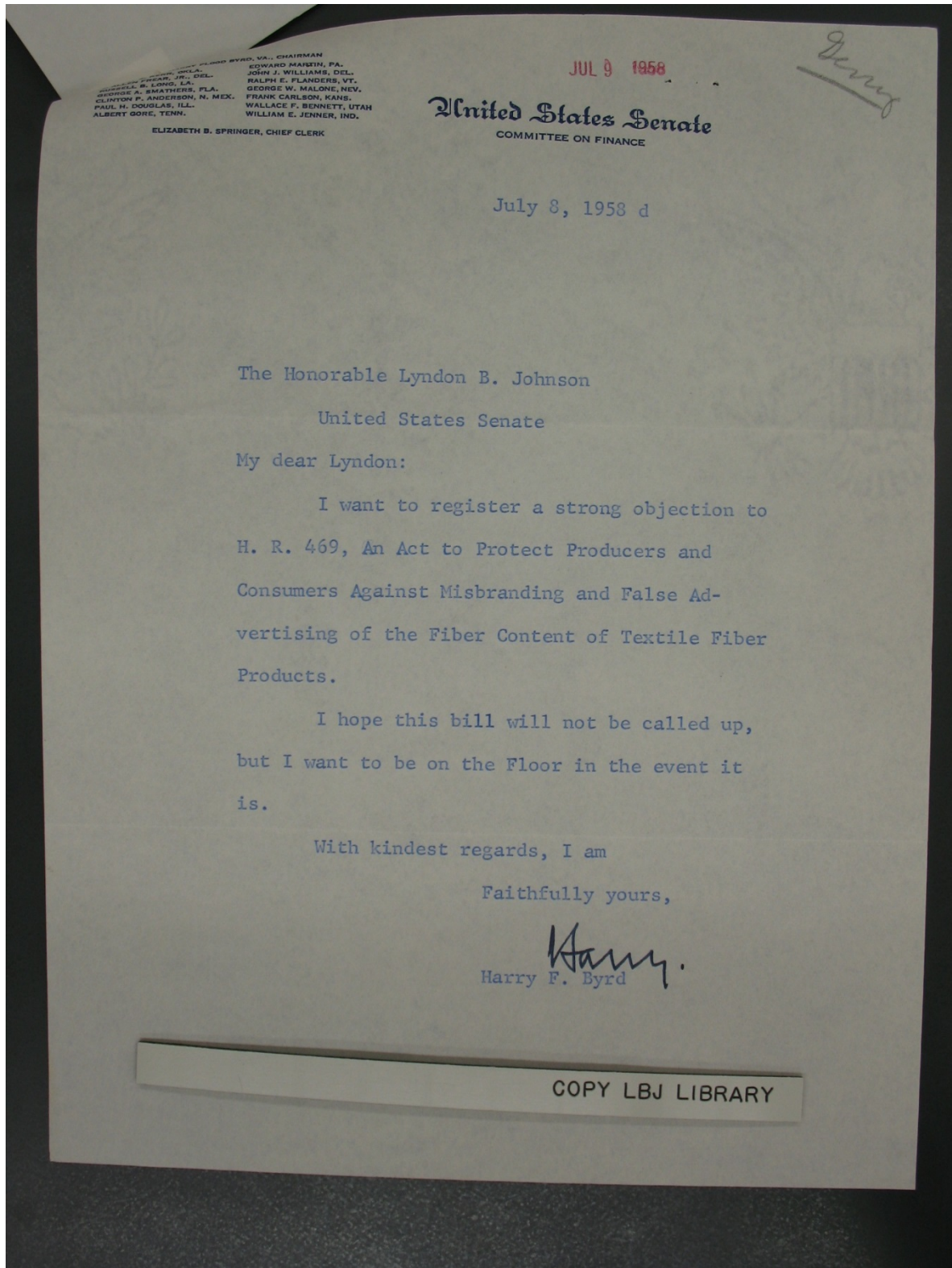


Figure 2: Response from Majority Leader Lyndon B. Johnson to Senator Harry Byrd (D-V), on July 10, 1958 (86th Congress) a response to Byrd's request to hold HR 469, the Textile Fiber Products Identification Act.

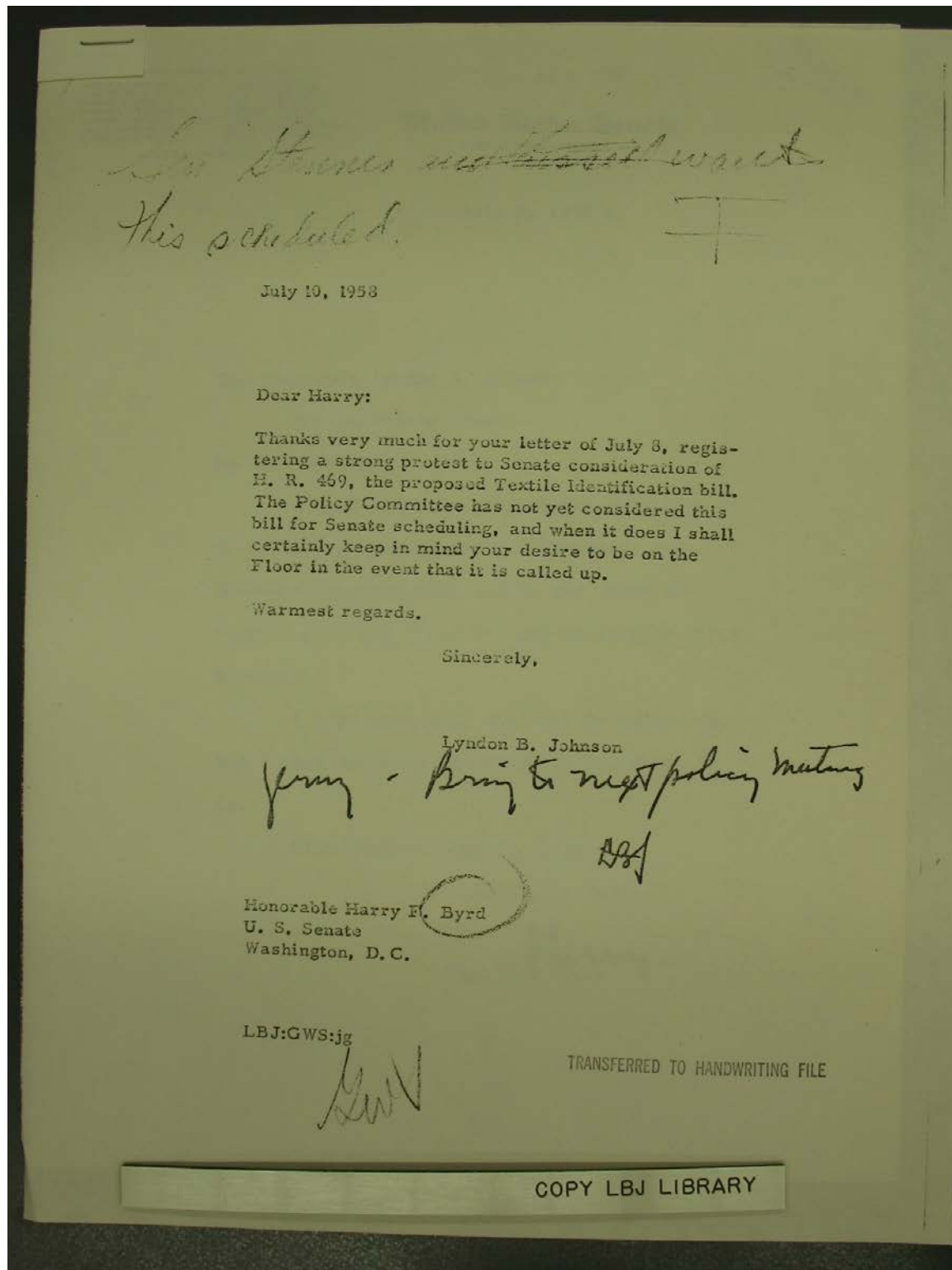


Figure 3: Oldest known hold in Lyndon Baines Johnson Archive. From Senator Clinton P. Anderson to Majority Leader Lyndon B. Johnson. While Senator Anderson is out of town, he requests the S. 3457 is passed over until he returns.

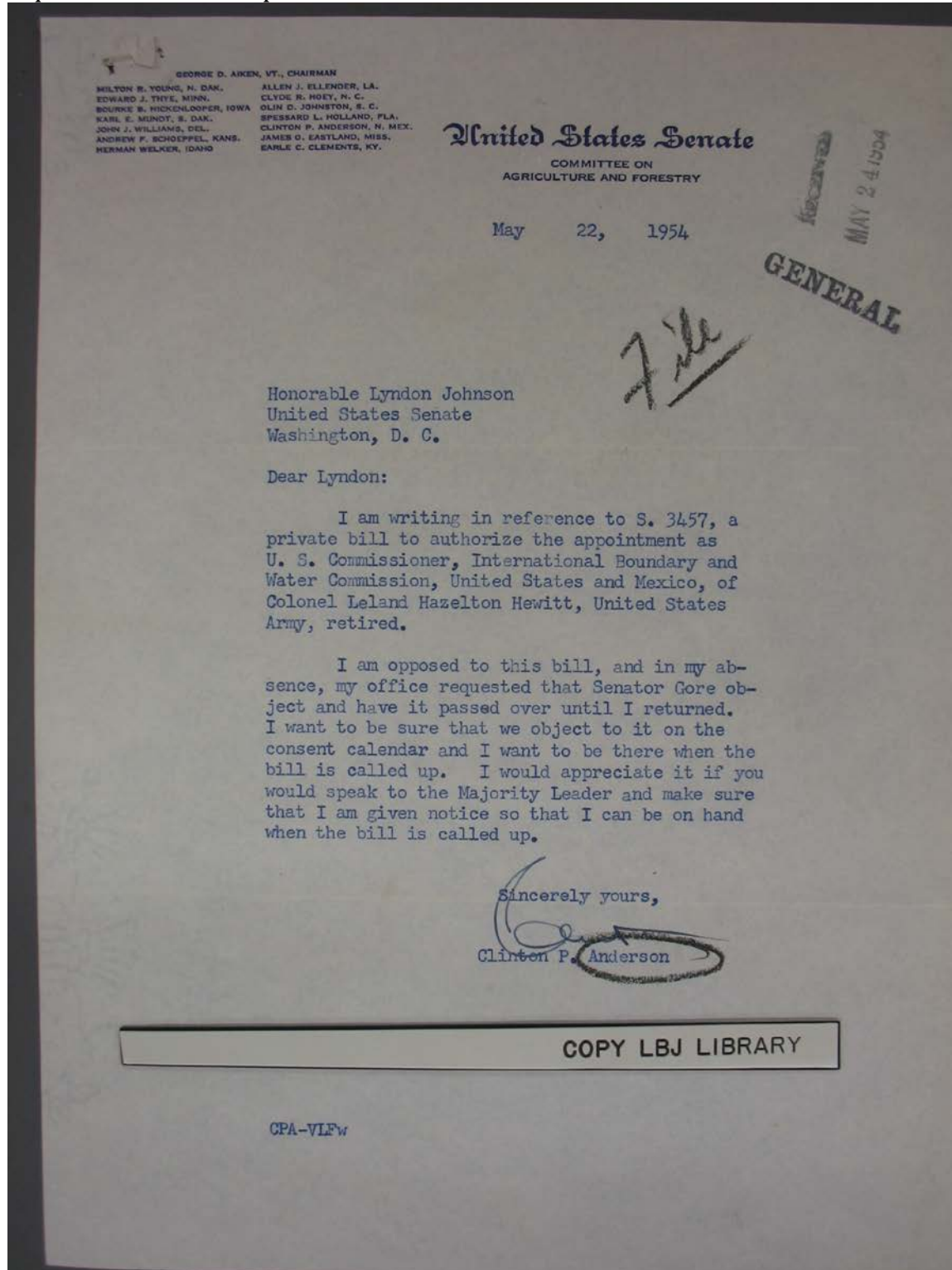


Figure 4: From Senator Clinton P. Anderson to Majority Leader Lyndon B. Johnson. It is the oldest evidence that indicates more than one senator wishing to hold a bill.

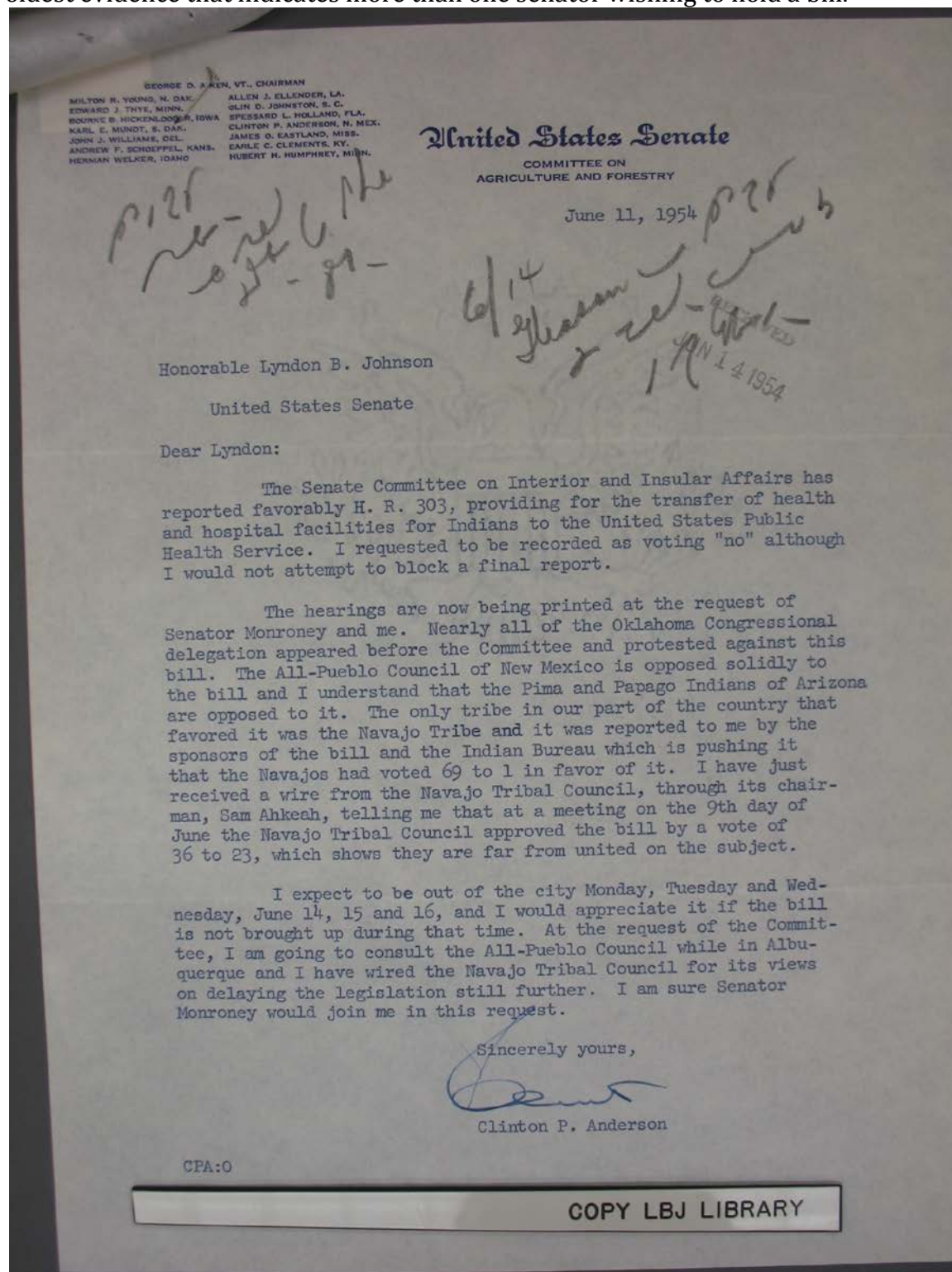
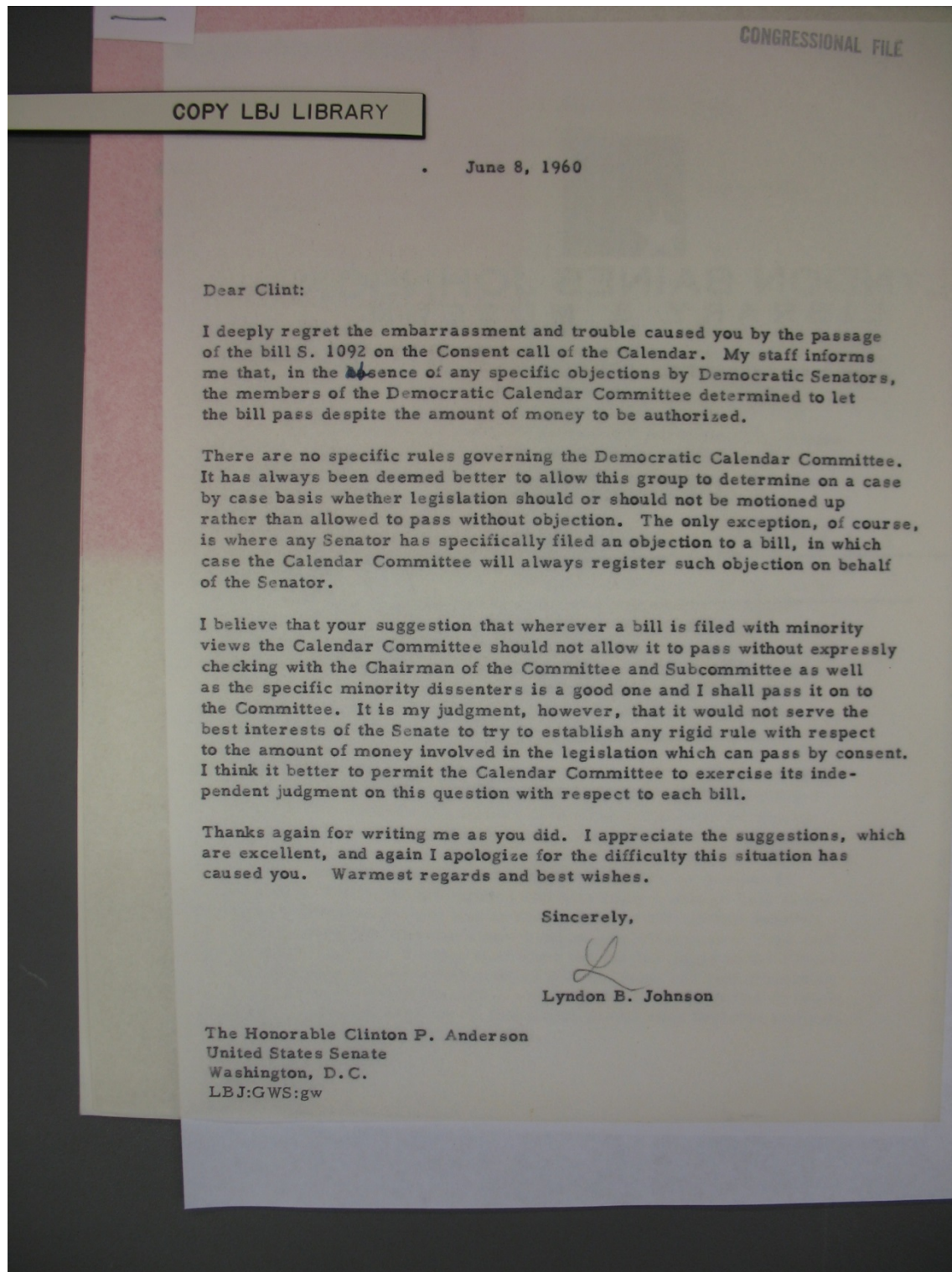


Figure 5: Senate Majority Leader Lyndon B. Johnson explains to Senator Clinton P. Anderson how holds work.



Figure

Figure 6: The Senate Calendar of Business Monday, July 18, 1955, from G. W. Siegel (Senator Johnson's assistant). It shows holds on different types of bills near the end of the first session of the 84th Congress.

6

ORDER No.	NUMBER AND AUTHOR OF BILL	TITLE	REPORTED BY
<i>over</i> 585	H. R. 4048 <i>Lehman move</i>	An act making recommendations to the States for the enactment of legislation to permit and assist Federal personnel, including members of the Armed Forces and their families, to exercise their voting franchise, and for other purposes.	June 17, 1955.—Mr. Green, Committee on Rules and Administration, without amendment. (Rept. 580.)
<i>over</i> 622	S. 1644 <i>Kerr</i>	To prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes.	June 21, 1955.—Mr. Kilgore, Committee on the Judiciary, with amendments. (Rept. 617.)
<i>hold</i> 629	S. 636 Mr. Hennings and others <i>hold</i>	A bill to revise the Federal election laws, to prevent corrupt practices in Federal elections, and for other purposes.	June 22, 1955.—Mr. Green, Committee on Rules and Administration, with amendments. (Rept. 624.) (Minority views filed.)
<i>ok</i> 677	S. 59 Mr. Johnston of South Carolina <i>ok</i>	A bill to amend the Civil Service Retirement Act of May 29, 1930, as amended.	June 27, 1955.—Mr. Johnston of South Carolina, Committee on Post Office and Civil Service, with amendments. (Rept. 672.)
<i>ok</i> 700	S. 2391 <i>ok</i>	A bill to amend the Defense Production Act of 1950, as amended.	June 30, 1955.—Mr. Frear, Committee on Banking and Currency, without amendment. (Rept. 696.)
712	H. R. 3338 <i>Morse</i>	An act to amend sec. 1 of the act of Mar. 12, 1914.	July 7, 1955.—Mr. Jackson, Committee on Interior and Insular Affairs, without amendment. (Rept. 706.)
<i>ok</i> 716	S. Res. 124 <i>to be called</i>	Resolution opposing the suspension of deportation of certain aliens.	July 7, 1955.—Mr. Kilgore, Committee on the Judiciary, without amendment. (Rept. 710.)
<i>ok</i> 739	H. R. 1408 <i>to be called</i> <i>hold</i>	An act for the relief of Caterina Ruello.	July 7, 1955.—Mr. Kilgore, Committee on the Judiciary, without amendment. (Rept. 730.)
<i>ok</i> 762	H. R. 6086 <i>to be called</i> <i>with amendment</i>	An act for the relief of certain relatives of United States citizens or lawfully resident aliens.	July 7, 1955.—Mr. Kilgore, Committee on the Judiciary, with amendments. (Rept. 760.)
<i>over</i> 774	S. 2253 Mr. Ellender and others <i>Magnus</i>	A bill to reemphasize trade development as the primary purpose of title I of the Agricultural Trade Development and Assistance Act of 1954.	July 7, 1955.—Mr. Eastland, Committee on Agriculture and Forestry, with an amendment. (Rept. 767.)
<i>ok</i> 775	S. 84 Mr. Humphrey	A bill for the relief of Wolodymyr Krysko.	July 12, 1955.—Mr. Kilgore, Committee on the Judiciary, without amendment. (Rept. 768.)
			CALENDAR CALLED JULY 11, 1955

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Table 1: Chamber of Origin for Democratic Holds 1955-56

Binary version of Pass	Binary version of Chamber		Total
	House	Senate	
Did not pass	26	143	169
Did Pass	90	93	183
Total	116	236	352

Table 2: Holds by Democratic Senators, 1955-56

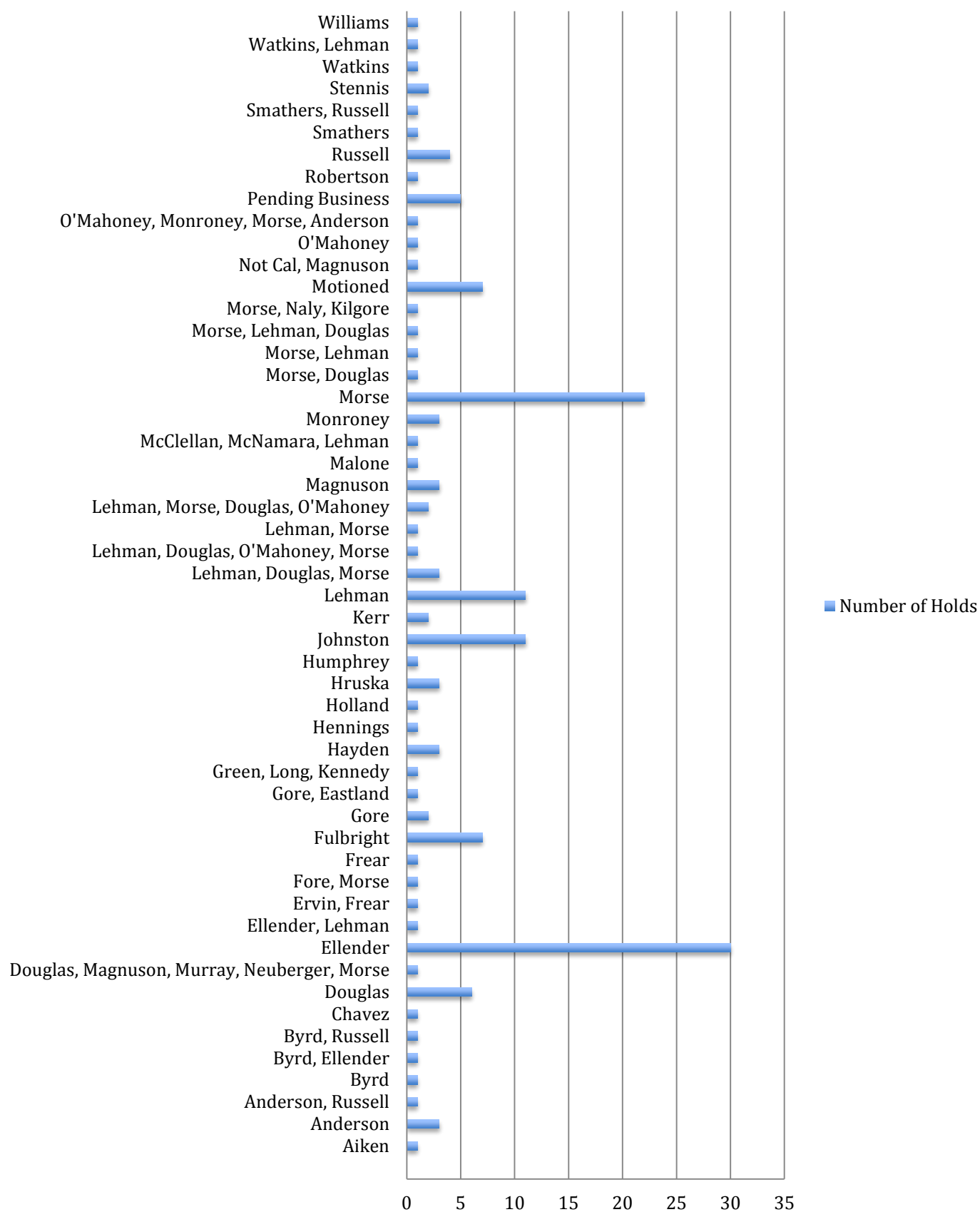


Table 3: Shows the fate of bills that had a hold placed on them. 1955-56

Pass	Freq.	Percent	Cum.
-----+-----			
No	169	48.01	48.01
Yes	183	51.99	100.00
-----+-----			
Total	352	100.00	

Bibliography

- Ainsworth, Scott, and Marcus Flathman. 1995. "Unanimous Consent Agreements as Leadership Tools." *Legislative Studies Quarterly*. 20(2): 177-95.
- Bawn, Kathleen, and Gregory Koger. 2003. "Effort, Intensity and Position Taking: Reconsidering Obstruction in the Pre-Cloture Senate." *Journal of Theoretical Politics* 20(1): 67-92.
- Bell, Lauren Cohen. 2011. *Filibustering in the U.S. Senate*. Amherst, NY: Cambria Press.
- Binder, Sarah A. 2007. "Where do Institutions Come From? Exploring the Origins of the Senate Blue Slip." *Studies in American Political Development*. 21: 1-15.
- Binder, Sarah A., Eric D. Lawrence, and Steven S. Smith. 2002. "Tracking the Filibuster, 1917 to 1996." *American Politics Research* 30(4): 406-22.
- Binder, Sarah A., Anthony J. Madonna, and Steven S. Smith. 2007. "Going Nuclear, Senate Style." *Perspectives on Politics*, 5(4): 729-40.
- Binder, Sarah A. and Steven S. Smith. 1997. *Filibustering in the United States Senate*. Washington, D.C.: The Brookings Institution.
- Broockman, David E., Daniel M. and Butler. 2013. "Partisan Obstruction in Antimajoritarian Institutions." Presented at the Western Political Science Association's Annual Meeting. Hollywood, CA.
- Caro, Robert A. 1990. *The Years of Lyndon Johnson: Master of the Senate*. New York: Random House.
- Congressional Record. 1956. "Resume of Congressional Activity." D642.
- Congressional Research Service. 2011. "Senate Cloture Rule."
<http://www.gpo.gov/fdsys/pkg/CPRT-112SPRT66046/pdf/CPRT-112SPRT66046.pdf>
- Evans, C. Lawrence, and Daniel Lipinski. 2005. "Holds, Legislation, and the Senate Parties." Presented at the Conference on Senate Parties, Rothermere American Institute, University of Oxford.
- Fisk, Catherine, and Erwin Chemerinsky. 1996. "The Filibuster." *Stanford Law Review* 49:181-254.
- Gold, Martin, Counsel to the Senate Republican Leader, 1979-1982, 2003-2004, Oral History Interviews, Senate Historical Office, Washington, D.C.
- Hildenbrand, William F. "William F. Hildenbrand, Secretary of the Senate, 1981-1985." Oral History Interviews, Senate Historical Office, Washington, D.C.

- Howard, Nicholas O., and Jason M. Roberts. 2012. "Holding Up the Senate: Bob Dole and the Politics of Holds in the U.S. Senate." Presented at the 2012 Congress and History Conference at the University of Georgia.
- Koger, Gregory. 2010. *Filibustering: A Political History of Obstruction in the House and Senate*. Chicago, IL: University of Chicago Press. 172.
- Krehbiel, Keith. 1986. "Unanimous Consent Agreements" Going Along in the Senate." *Journal of Politics* 48: 541-64.
- Oleszek, Walter. 1978. *Congressional Procedures and the Policy Process*. 5th ed. Washington, D.C.: Congressional Quarterly Press. 137.
- Oleszek, Walter. 2011. "Proposal to Reform Holds in the Senate." Congressional Research Service Report. <http://www.fas.org/sgp/crs/misc/RL31685.pdf>
- Paone, Martin P., " Martin P. Paone: Senate Democratic Cloakroom Staff to Majority Secretary, 1979-2008," Oral History Interviews, Senate Historical Office, Washington, D.C.
- Poole, Keith. 2013. "Senate 84 Rank Ordering." Accessed March 23, 2013. http://voteview.com/SENATE_SORT84.HTM
- Ritchie, Donald. February 27, 2012. Personal Communication.
- Senate Historical Office. 2009. "Wayne Morse." Website accessed March 23, 2103. http://www.senate.gov/artandhistory/history/minute/Wayne_Morse.htm
- Sinclair, Barbara. 1997. *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*. Washington, D.C.: Congressional Quarterly Inc.
- Smith, Steven. S. 1989. *Call to Order: Floor Politics in the House and Senate*. Washington, D.C.: Brookings.
- Smith, Steven S., and Marcus Flathman. 1989. "Managing the Senate Floor: Complex Unanimous Consent Agreements since the 1950s." *Legislative Studies Quarterly*, 14(3): 349-74.
- United States. 1958. Textile Fiber Products Identification Act: Public Law 85-897, 85th Congress, H.R. 469, September 2, 1958. Washington, U.S. Government Printing Office, 1958. Accessed online March 23, 2013. <http://babel.hathitrust.org/cgi/pt?id=coo.31924013798586;seq=5;view=1up;num=1>
- Wawro, Gregory J. 2000. *Legislative Entrepreneurship in the U.S. House of Representatives*. Ann Arbor, MI: The University of Michigan Press. 47

Wawro, Gregory J., and Eric Schickler. 2006. *Filibuster: Obstruction and Lawmaking in the U.S. Senate*. Princeton, N.J.: Princeton University Press.

